IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-6609

EUGENIO AND ALICIA JIMENEZ, by their father and next friend, RAMON JIMENEZ, *et al.*,

Appellants,

—v.—

CASPAR W. WEINBERGER, Secretary of Health, Education and Welfare,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

June 15, 1971	Plaintiff's Complaint for Declaratory Judgment, Injunctive and Other Appropriate Relief
October 26, 1971	Answer of Defendant to Plaintiff's Complaint
January 30, 1973	Memorandum Opinion and Judgment Order

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

Dec. 14, 1970

NOTICE OF DECISION

Please Read Carefully

If you disagree, in whole or in part, with the enclosed decision of the hearing examiner, you may request the Appeals Council to review it. However, your request for review must be filed *within 60 days* following the date shown below.

You, or your representative, may file the request for review at the nearest office of the Social Security Administration, or you may file the request for review with the hearing examiner, or with the Appeals Council.

Unless you file a timely request for review by the Appeals Council, you may not obtain a court review of your case under sections 205(g) and 1869(b) of the Social Security Act.

This notice and enclosed copy of hearing examiner's decision mailed to the claimant and his representative, Jane G. Stevens, on December 11, 1970

REPRESENTATIVE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

HEARING EXAMINER'S DECISION

In the case of

Ramon C. Jimenez
(Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Child's Insurance Benefits

305-30-8719
(Social Security Number)

This case comes before the hearing examiner upon a request for hearing filed on June 30, 1970 by Attorney Jane G. Stevens on behalf of the claimant and wage earner, Ramon C. Jimenez. She appeals from a determination of the Social Security Administration to the effect that the claimant's son, Eugenio and the claimant's daughter, Alicia, were not eligible for child's insurance benefits under the Social Security Act. At the hearing held on November 18, 1970, in Chicago, Illinois, the claimant was present and testified. Also present were Attorney Jane G. Stevens, claimant's representative and Martha Donis, interpreter.

PROCEDURAL HISTORY

Based on an application filed on September 4, 1963, claimant was found to be under a disability beginning April 1, 1963. He was awarded disability insurance benefits beginning with the month of October, 1963. Auxiliary benefits were also awarded to claimant's wife, Filomena Jimenez, and to the minor children of the claimant and his wife, Filomena.

On August 21, 1969 claimant filed an application for child's insurance benefits on behalf of certain illegitimate children as follows: Magdalena Jimenez, born August 13, 1963; Eugenio Jimenez, born January 18, 1965; Alicia Jimenez, born February 24, 1968. Upon denial of said application as to Eugenio and Alicia, of which claimant was notified by letter dated January 7, 1970, he requested reconsideration on March 18, 1970, and thereafter was notified by letter dated May 5, 1970 that the denial of his application for Eugenio and Alicia was affirmed. Claimant thereupon filed a request for hearing.

Statement of Law

Under section 202(d) of the Social Security Act, in order for entitlement to child's insurance benefits, a child must have been dependent upon the wage earner at the beginning of the wage earner's period of disability or at the time he became entitled to disability insurance benefits. Section 216(h)(2)(A) of the Act provides that in determining whether an applicant is the child of a fully or currently insured individual for purposes of this title, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual was domiciled at the time such applicant files application (at the time of his death). Applicants who according to such law would have the same status relative to taking intestate personal property as a child shall be deemed such—in the State of Illinois, a child born out of wedlock can be legitimatized only under the following conditions: (1) that the parents intermarry and (2) that the father acknowledges the child.

Section 216(h)(3)(B) in substance and in pertinent part provides that an applicant who is a son or daughter of the wage earner, who does not otherwise qualify as a "child", shall nevertheless be deemed to be the child of the wage earner's if as early as the date on which the wage earner became entitled to disability insurance benefits:

(i) the wage earner—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been declared by a court to be the father of the child, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter, or

(ii) the wage earner is shown to be the father of the applicant and was living with or contributing to the support of the applicant.

Section 403(a) of the Act states in pertinent part as follows:

> "Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased; except that if such total of benefits for such month includes any benefit or benefits under section 402(d) of this title which are payable solely by reason of section 416(h)(3) of this title, the reduction shall first be applied to reduce (proportionately where there is more than one benefit so payable) the benefit so payable (but not below zero)."

Statement of Issues

The general issue is whether the claimant's (wage earner's) son, Eugenio, and his daughter, Alicia, are entitled to child's insurance benefits. This depends on whether said son and daughter were, within the meaning of the Social Security Act, the children or deemed to be the children or Ramon Jimenez.—Also for consideration is whether Magdalena Jimenez was entitled to child's insurance benefits as early as August 13, 1963, the date of her birth.